

SENATE BILL NO. 569

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE SENATE FINANCE AND CLAIMS STANDING COMMITTEE

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6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING THE OFFICE OF PUBLIC

7 DEFENDER; CLARIFYING THAT AN ASSIGNMENT OF COUNSEL BY THE OFFICE OF PUBLIC DEFENDER

8 IS SUBJECT TO INQUIRY AND DENIAL BY A COURT; PROVIDING THAT IN THE EVENT OF A CONFLICT

9 OF INTEREST A PUBLIC DEFENDER FROM AN ADJOINING DISTRICT MUST BE SUBSTITUTED UNLESS

10 THE SUBSTITUTION IS NOT COST-EFFECTIVE; AMENDING SECTIONS 47-1-104, 47-1-111, AND 47-1-202,

11 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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**Section 1.** Section 47-1-104, MCA, is amended to read:

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16 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public**

17 **expense.** (1) There is a statewide public defender system, which must deliver public defender services in all

18 courts in this state. The system is supervised by the commission and administered by the office.

19 (2) The commission shall approve a strategic plan for service delivery and divide the state into not more

20 than 11 public defender regions. The commission may establish a regional office to provide public defender

21 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in

22 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described

23 in 47-1-102.

24 (3) ~~Beginning July 1, 2006, when~~ When a court orders the office to assign counsel, the office shall

25 immediately assign a public defender qualified to provide the required services. The commission shall establish

26 protocols to ensure that the office makes appropriate assignments in a timely manner.

27 (4) ~~Beginning July 1, 2006~~ Subject to 47-1-111(1)(d), a court may order the office to assign counsel

28 under this chapter in the following cases:

29 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial

30 inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:



- 1 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of  
2 incarceration, as provided in 46-8-101;
- 3 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in  
4 40-6-119;
- 5 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any  
6 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child  
7 Welfare Act, as provided in 41-3-425;
- 8 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- 9 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- 10 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 11 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally  
12 disabled person to a residential facility, as provided in 53-20-112;
- 13 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in  
14 53-21-116;
- 15 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as  
16 provided in 53-24-302; and
- 17 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 18 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless  
19 of the person's financial ability to retain private counsel, as follows:
- 20 (i) as provided for in 41-3-425;
- 21 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in  
22 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution  
23 Act, as provided in 41-5-1607;
- 24 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,  
25 as provided in 41-6-101;
- 26 (iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice  
27 of Abortion Act, as provided in 50-20-212;
- 28 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled  
29 person to a residential facility, as provided in 53-20-112;
- 30 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

1 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a  
2 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

3 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental  
4 disorder of the ward, as provided in 72-5-322; and

5 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

6 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a  
7 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title  
8 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

9 (b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender  
10 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a  
11 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the  
12 statewide public defender system and does not result in a conflict of interest."

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14 **Section 2.** Section 47-1-111, MCA, is amended to read:

15 **"47-1-111. Eligibility -- determination of indigence -- rules.** (1) (a) ~~Beginning July 1, 2006,~~  
16 ~~when~~ When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a  
17 determination under this section.

18 (b) If the person for whom counsel has been assigned is later determined pursuant to this section to be  
19 ineligible for public defender services, the office shall immediately notify the court so that the court's order may  
20 be rescinded.

21 (c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until  
22 the court's order requiring the assignment is rescinded.

23 (d) Any determination pursuant to this section is subject to the review and approval of the court. The  
24 propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an  
25 assignment.

26 (2) (a) An applicant who is eligible for a public defender only because the applicant is indigent shall also  
27 provide a detailed financial statement and sign an affidavit.

28 (b) The application, financial statement, and affidavit must be on a form prescribed by the commission.

29 (c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or  
30 criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant

1 for perjury or false swearing.

2 (d) The office may not withhold the timely provision of public defender services for delay or failure to fill  
3 out an application. However, a court may find a person in civil contempt of court for a person's unreasonable  
4 delay or failure to comply with the provisions of this subsection (2).

5 (3) An applicant is indigent if:

6 (a) the applicant's gross household income, as defined in 15-30-171, is at or less than 133% of the  
7 poverty level set according to the most current federal poverty guidelines updated periodically in the federal  
8 register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2);

9 or

10 (b) the disposable income and assets of the applicant and the members of the applicant's household are  
11 insufficient to retain competent private counsel without substantial hardship to the applicant or the members of  
12 the applicant's household.

13 (4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or  
14 solely because the applicant is employed.

15 (5) A determination may be modified by the office or the court if additional information becomes available  
16 or if the applicant's financial circumstances change.

17 (6) The commission shall establish procedures and adopt rules to implement this section. Commission  
18 procedures and rules:

19 (a) must ensure that the eligibility determination process is fair and consistent statewide;

20 (b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from  
21 the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the  
22 members of the applicant's household;

23 (c) may provide for the use of other public or private agencies or contractors to conduct eligibility  
24 screening under this section;

25 (d) must avoid unnecessary duplication of processes; and

26 (e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."  
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28 **Section 3.** Section 47-1-202, MCA, is amended to read:

29 **"47-1-202. Chief public defender -- duties.** In addition to the duties provided in 47-1-201, the chief  
30 public defender shall:



- 1 (1) act as secretary to the commission and provide administrative staff support to the commission;
- 2 (2) assist the commission in establishing the state system and establishing the standards, policies, and  
3 procedures required pursuant to this chapter;
- 4 (3) develop and present for the commission's approval a regional strategic plan for the delivery of public  
5 defender services;
- 6 (4) establish processes and procedures to ensure that when a case that is assigned to the office  
7 presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and  
8 ethically; If there is a conflict, a public defender must be substituted from an adjoining district unless the  
9 substitution is not cost-effective.
- 10 (5) establish processes and procedures to ensure that office and contract personnel use information  
11 technology and caseload management systems so that detailed expenditure and caseload data is accurately  
12 collected, recorded, and reported;
- 13 (6) establish administrative management procedures for regional offices;
- 14 (7) establish procedures for managing caseloads and assigning cases in a manner that ensures that  
15 public defenders are assigned cases according to experience, training, and manageable caseloads and taking  
16 into account case complexity, the severity of charges and potential punishments, and the legal skills required to  
17 provide effective assistance of counsel;
- 18 (8) establish policies and procedures for assigning counsel in capital cases that are consistent with  
19 standards issued by the Montana supreme court for counsel for indigent persons in capital cases;
- 20 (9) establish and supervise a training and performance evaluation program for attorneys and nonattorney  
21 staff members and contractors;
- 22 (10) establish procedures to handle complaints about public defender performance and to ensure that  
23 public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that  
24 office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated  
25 pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter  
26 61;
- 27 (11) maintain a minimum client caseload, as determined by the commission;
- 28 (12) actively seek gifts, grants, and donations that may be available through the federal government or  
29 other sources to help fund the system; and
- 30 (13) perform all other duties assigned by the commission pursuant to this chapter."

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2           NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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